

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ERIC WARBELTON, and JOSE
SILVA,

Plaintiffs,

V.

ROBERT HOUSTON, et al.,

Defendants.

8:09CV132

MEMORANDUM AND ORDER

This matter is before the court on Plaintiffs' Motion to Amend Complaint (filing no. [14](#)), Motion to Proceed In Forma Pauperis (filing no. [15](#)), and Motion to Extend Time to Serve Defendants (filing no. [16](#)).

In their Motion to Amend Complaint, Plaintiffs state that they “forgot” to allege claims for monetary relief against the remaining Defendants in their individual capacities. (Filing No. 16.) Federal Rule of Civil Procedure 15(a) provides that the court “should freely give leave [to amend] when justice so requires.” Defendants have not yet been served and no discovery has occurred. For good cause shown, the Motion to Amend Complaint is granted. Plaintiffs also seek additional time to serve Defendants. While the court will not permit Plaintiffs an additional 120 days as requested, the court will allow an additional 60 days, or until December 28, 2009, to complete service of process. In the event that Plaintiffs do not effect service of process on Defendants by December 28, 2009, this matter will be dismissed as to any unserved Defendant. **No further extensions of time will be permitted.**

Regarding Plaintiffs’ Motion to Proceed In Forma Pauperis, the court notes that Plaintiffs were granted leave to proceed in forma pauperis on May 18, 2009. (Filing Nos. [11](#) and [12](#).) Thus, the Motion is moot.

IT IS THEREFORE ORDERED that:

1. Plaintiffs' Motion to Amend Complaint (filing no. [14](#)) is granted. The Clerk of the court is directed to file the Amended Complaint, attached to Filing No. [14](#), as a separate document in this matter.

2. Plaintiffs' Motion to Extend Time to Serve Defendants (filing no. [16](#)) is granted. Plaintiffs shall have until **December 28, 2009** to complete service of process on all Defendants. In the event that Plaintiffs fail to effect service of process by that date, this matter will be dismissed as to any unserved Defendant. **No further extensions of time to serve Defendants will be permitted.**

3. Plaintiffs' Motion to Proceed In Forma Pauperis (filing no. [15](#)) is denied as moot.

4. The Clerk of the court is directed to set a pro se case management in this matter with the following text: December 28, 2009: Check for completion of service of process on Defendants.

October 28, 2009.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

*This opinion may contain hyperlinks to other documents or Web sites. The U.S. District Court for the District of Nebraska does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their Web sites. Likewise, the court has no agreements with any of these third parties or their Web sites. The court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the court.